

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

DAVID A. PETRI,

Petitioner,

v.

CIVIL ACTION NO. 5:09-cv-00361

D. BERKEBILE,

Respondent.

**MEMORANDUM OPINION AND ORDER**

David A. Petri, pro se (Petitioner) brought the present action under 28 U.S.C. § 2241, seeking a Writ of Habeas Corpus [Docket 1]. By standing order entered in this case on April 14, 2009, his suit was referred to Magistrate Judge R. Clarke VanDervort for proposed findings of fact and a recommendation (PF&R) (Docket 3). Subsequently, Petitioner filed a motion seeking leave to voluntarily withdraw his complaint, “as the issues contained therein have been amicably resolved at this time by both parties.” [Docket 13] On October 6, 2009, Magistrate Judge VanDervort issued a PF&R recommending the dismissal of Petitioner’s application without prejudice [Docket 14].

This Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of de novo review and the petitioner’s right to appeal this Court’s order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort’s

PF&R were due on October 26, 2009, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

To date, no objections have been filed.

Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge VanDervort's PF&R in its entirety [Docket 14], (2) **DISMISSES** Petitioner's Petition for Writ of Habeas Corpus [Docket 1] without prejudice, and (3) **DIRECTS** the Clerk to remove this action from the Court's active docket. A separate judgment order will enter this day, implementing the rulings contained herein.

**IT IS SO ORDERED.**

This Court further **DIRECTS** the Clerk to provide a copy of this Order to all counsel of record, Petitioner, pro se, and Magistrate Judge VanDervort.

ENTER: November 3, 2009



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE